


Via Fax FILED

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U.S. DISTRICT COURT
BY:  DEPUTY

8 Attorneys for Plaintiff
9 U.S. EQUAL EMPLOYMENT
10 OPPORTUNITY COMMISSION

11
12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 '08 CV 1780 REG JMA

15 U.S. EQUAL EMPLOYMENT
16 OPPORTUNITY COMMISSION,

17 Plaintiff,

18 vs.

19
20 DILLARDS, INC., DILLARD STORE
21 SERVICES, INC., AND DOES 1-11,
22 INCLUSIVE,

23 Defendant(s).

COMPLAINT

CIVIL RIGHTS-
EMPLOYMENT DISCRIMINATION

JURY TRIAL DEMAND

24
25
26 NATURE OF THE ACTION AND JURISDICTION

27 This is an action under Title I of American with Disabilities Act of 1990
28 ("ADA"), and Title I of the Civil Rights Act of 1991, to correct unlawful

1 employment practices on the basis of disability and to seek relief on behalf of
2 Charging Party Corina Scott, Brittany Rios Kim, and others similarly-situated, who
3 were adversely affected by such practices. Plaintiff U.S. Equal Employment
4 Opportunity Commission alleges that Defendants Dillards, Inc. and Dillard Store
5 Services, Inc. ("Defendants") unlawfully subjected Charging Party Scott, Brittany
6 Rios Kim, and other similarly-situated individuals to unlawful employment
7 practices by requiring the disclosure of confidential medical information and
8 interfering with their rights under the ADA in violation of Section 102 of the ADA,
9 42 U.S.C. § 12112. The Commission further alleges that Defendants subjected
10 Scott to retaliatory discharge in violation of Section 503 of the ADA, 42 U.S.C. §
11 12203.

12 **JURISDICTION AND VENUE**

13 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451,
14 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to §
15 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference §§
16 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42
17 U.S.C. §§ 2000e-5(f)(1) and (3) and pursuant to § 102 of the Civil Rights Act of
18 1991, 42 U.S.C. § 1981a.

19 2. The employment practices alleged to be unlawful were committed
20 within the jurisdiction of the United States District Court for the Southern District
21 of California.

22 **PARTIES**

23 3. Plaintiff, the U.S Equal Employment Opportunity Commission
24 ("EEOC" or "Commission"), is the agency of the United States of America
25 charged with the administration, interpretation and enforcement of Title I of the
26 ADA and is expressly authorized to bring this action by § 107(a) of the ADA, 42
27 U.S.C. § 12117(a), which incorporates by reference § 706(f)(1) of Title VII, 42
28 U.S.C. § 2000e-5(f)(1).

1 4. At all relevant times, Defendants have continuously been Delaware
2 corporations doing business within the jurisdiction of the Southern District of
3 California, El Centro, California, and have continuously had at least 15 employees.

4 5. At all relevant times, Defendants have continuously been employers
5 engaged in an industry affecting commerce within the meaning of § 101(5) of the
6 ADA, 42 U.S.C. § 12111(5), and § 101(7) of the ADA, 42 U.S.C. § 12111(7),
7 which incorporates by reference §§ 701(g) and (h) of Title VII, 42 U.S.C. §§
8 701(g) and (h) of Title VII, 42 U.S.C. §§ 2000e(g) and (h).

9 6. At all relevant times, Defendants have been a covered entity under
10 § 101(2) of the ADA, 42 U.S.C. § 12111(2).

11 7. All of the acts and failures to act alleged herein were duly performed
12 by and attributable to each Defendant(s), each acting as a successor, agent,
13 employee, alter ego, indirect employer, joint employer or under the direction and
14 control of the others, except as specifically alleged otherwise. Said acts and
15 failures to act were within the scope of such agency and/or employment, and each
16 Defendant participated in, approved and/or ratified the unlawful acts and omissions
17 by the other Defendants complained of herein. Whenever and wherever reference
18 is made in this Complaint to any act by a Defendant or Defendants, such
19 allegations and reference shall also be deemed to mean the acts and failures to act
20 of each Defendant acting individually, jointly, and/or severally.

21 8. Plaintiff is ignorant of the true names and capacities of each defendant
22 sued as DOES 1 through 11, inclusively, and therefore Plaintiff sues said
23 defendants by fictitious names. Plaintiff reserves the right to amend the complaint
24 to name each DOE defendant individually or corporately as it becomes known.
25 Plaintiff alleges that each DOE defendant was in some manner responsible for the
26 acts and omissions alleged herein and Plaintiff will amend the complaint to allege
27 such responsibility when the same shall have been ascertained by Plaintiff.
28

CONDITIONS PRECEDENT

9. More than thirty (30) days prior to the institution of this lawsuit, Charging Party Corina Scott filed a charge of discrimination with the Commission alleging that Defendants violated Title I of the ADA.

10. Prior to the institution of this lawsuit, the Commission's representatives attempted to eliminate the unlawful employment practices alleged below and to effect Defendants' voluntary compliance with Title I through informal methods of conciliation, conference, and persuasion.

11. Prior to the institution of this lawsuit, all conditions precedent were satisfied.

STATEMENT OF CLAIMS

12. Since at least 2005, Defendants have unlawfully subjected Charging Party Corina Scott, Brittany Rios Kim, and other similarly situated individuals to disability-related inquiries not justified by business necessity. More specifically, Defendants have engaged in a practice and policy not justified by business necessity of requiring employees to disclose the nature of their medical illness in violation of § 102, 42 U.S.C. § 12112.

13. Sometime during the Spring of 2005, Brittany Rios Kim called in sick to work due to medical illness. Shortly thereafter, Brittany Rios Kim was informed by Defendants that company policy required her doctor's note to state the nature of her medical illness requiring the absence from work, or the absence would be deemed unexcused. Because Brittany Rios Kim refused to reveal the nature of her illness to Defendants in the doctor's note, Rios' absence was deemed unexcused.

14. On or about May 30, 2005, Brittany Rios Kim fell ill at work and was taken to the hospital in an ambulance.

15. On or about May 31, 2005, Brittany Rios Kim called in sick and reported her need for medical leave to seek further medical treatment.

16. On or about June 3, 2005, Brittany Rios Kim submitted a doctor's

1 note from her primary care physician verifying a need for absence from May 30,
2 2005 through June 6, 2005. This doctor's note did not state the nature of Brittany
3 Rios Kim's medical illness.

4 17. On or about June 6, 2005, Brittany Rios Kim submitted another
5 doctor's note from a cardiologist verifying a need for absence from work until June
6 15, 2005. This doctor's note did not state the nature of Brittany Rios Kim's
7 medical illness.

8 18. On or about June 13, 2005, Brittany Rios Kim was informed that
9 Defendant had terminated her employment for unexcused absences.

10 19. Due to illness, Charging Party Corina Scott was absent from her
11 employment with Defendants on May 29, May 31, and June 2, 2006.

12 20. On or about June 5, 2006, Charging Party Corina Scott returned to
13 work with a doctor's note confirming a return to work date of June 5, 2006.
14 Defendants informed Scott that this doctor's note was unacceptable because it
15 failed to state the nature of Scott's medical condition or illness pursuant to
16 company policy. Scott then objected to the policy requiring disclosure and
17 complained to Defendants that such disclosure would violate federal privacy laws.
18 Defendants then ordered Scott to have her doctor provide the nature of her illness
19 on the doctor's note.

20 21. On or about June 6, 2006, Charging Party Corina Scott again objected
21 to the policy requiring disclosure and refused to disclose the nature of her illness
22 (medical condition) to Defendants.

23 22. In violation of § 503, 42 U.S.C. §12203(a), shortly thereafter on June
24 6, 2006, Defendants discharged Charging Party Corina Scott in retaliation for
25 having opposed Defendants' policy requiring disclosure of the nature of her
26 medical condition and for refusing to disclose her medical condition.

27 23. Defendants' practice and policy of subjecting Charging Party Corina
28 Scott, Brittany Rios Kim, and other similarly-situated individuals interfered with

1 the enjoyment of their rights under § 503 of the ADA, 42 U.S.C. § 12203(b), to be
2 free from medical inquiries that are not justified by business necessity.

3 24. The effect of the practices complained of as described in paragraphs
4 12 through 23 have been to deprive Charging Party Corina Scott, Brittany Rios
5 Kim, and other similarly-situated individuals of equal employment opportunities.

6 25. The unlawful employment practices in paragraphs 12 through 23
7 above were intentional.

8 26. The unlawful employment practices complained of above were done
9 with malice or with reckless indifference to the federally protected rights of
10 Charging Party Corina Scott, Brittany Rios Kim, and other similarly situated
11 individuals.

12 **PRAYER FOR RELIEF**

13 Wherefore, the Commission respectfully requests that this Court:

14 A. Grant a permanent injunction enjoining Defendants, their officers,
15 successors, assigns, and all persons in active concert or participation with each of
16 them, from engaging in any employment practices which discriminates on the basis
17 of disability.

18 B. Order Defendants to institute and carry out policies, practices, and
19 programs to ensure that they would not engage in unlawful employment practices
20 in violation of Section 102, 42 U.S.C. § 12112 and Section 503, 42 U.S.C. §
21 12203.

22 C. Order Defendants to make whole Charging Party Corina Scott,
23 Brittany Rios Kim, and other similarly-situated individuals by providing
24 compensation for past and future pecuniary losses resulting from the unlawful
25 employment practices described above in the amounts to be determined at trial.

26 D. Order Defendants to make whole Charging Party Corina Scott,
27 Brittany Rios Kim, and other similarly-situated individuals by providing
28 compensation for non-pecuniary losses resulting from the unlawful employment

1 practices described above in the amounts to be determined at trial. The non-
2 pecuniary losses include emotional pain, suffering, inconvenience, mental anguish,
3 humiliation and loss of enjoyment of life, in amounts to be determined at trial.

4 E. Order Defendants to pay Charging Party Corina Scott, Brittany Rios
5 Kim, and other similarly-situated individuals punitive damages for its malicious
6 and/or reckless conduct in an amount to be determined at trial.

7 F. Award the Commission its costs of this action.

8 G. Grant such further relief as the Court deems necessary and proper in
9 the public interest.

10 **JURY TRIAL DEMAND**

11 The Commission requests a jury trial on all questions of fact raised by its
12 complaint.

13
14 RONALD S. COOPER
General Counsel

15 JAMES L. LEE
Deputy General Counsel

16 GWENDOLYN YOUNG REAMS
Associate General Counsel

17 U.S. EQUAL EMPLOYMENT
18 OPPORTUNITY COMMISSION
19 1801 "L" Street, N.W.
20 Washington, D.C. 20507

21
22 Dated: September 29, 2008

23  (Via PDF)
24 ANNA Y. PARK
Regional Attorney
25 U.S. EQUAL EMPLOYMENT
26 OPPORTUNITY COMMISSION
27
28

Via Fax

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the local docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

(b) County of Residence of First Listed Plaintiff LA County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Anna Park and Connie Liem, U.S. EEOC, 255 E. Temple St., 4th Fl., Los Angeles, CA 90012 (213) 894-1083

DEFENDANTS

08 SEP 29 PM 3:08

DILLARDS, INC., DILLARD STORES SERVICES, INC., AND DOES 1-11, INCLUSIVE

County of Residence of First Listed Defendant Imperial County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

08 CV 1780 IEG JMA

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|---|---|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | PTF <input type="checkbox"/> 2 DEF <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | PTF <input type="checkbox"/> 5 DEF <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | PTF <input type="checkbox"/> 3 DEF <input type="checkbox"/> 3 | Foreign Nation | PTF <input type="checkbox"/> 6 DEF <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
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V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Section 102, 42 U.S.C. § 12112 and Section 503, 42 U.S.C. § 12203

Brief description of cause: Unlawful employment practices by requiring employee disclosure of confidential medical information and retaliatory discharge for refusing to comply.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/29/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

CR